c/f 1097

(3) (1)

BEFORE THE HIGH COURT OF JUDICATURE OF CHHATTISGARH AT BILASPUR

IN THE MATTER OF WRIT PETITION NO. 1557 /2002.

PETITIONER : Saheb lal S/o. Nathuram alias Chhatturam aged about 54 years Occupation – Dozer Operator, Manikpur Colliery, SECL Ltd. R/o. Pump house colony, Qtr. No. M-211, Tehsil & District – Korba.

P. R. No. 1561/02
Presented by Shri ... Advocate
dated ... 31/12/02

VERSUS

RESPONDENTS : 1. General Manager
Manikpur Colliery Project,
SECL Ltd.
Tehsil & District – Korba.

2. Senior Personal Manager
Manikpur Colliery Project,
SECL Ltd.
Tehsil & District – Korba.

PETITION UNDER ARTICLES 226 / 227 OF THE CONSTITUTION OF INDIA FOR ORDER / DIRECTIONS IN NATURE OF WRITS OF MANDAMUS, CERTIORARY OR ANY OTHER WRIT OF LIKE NATURE

(83)

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.No.1557/2002

Saheb Lal

Vs.

General Manager, Manikpur Colliery Project,
SECL, Korba and another

O R D E R

Post for 22.08.2005

Sd/-
Sunil Kumar Sinha
Judge

Noted
Akw (Anup Majumdar)
22/8/05 Adv for Petitioner

(24)

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P. No.1557/2002

Saheb Lal

Vs.

General Manager, Manikpur Colliery Project,
S.E.C.L, Korba and another

Shri Anoop Majumdar, counsel for the petitioner.

Shri Praveen K. Das, counsel for the respondents.

ORDER
(22.8.2005)

Sunil Kumar Sinha, J,

(1) The petitioner, who has retired during the pendency of this writ petition on 30.6.2003, had filed this writ petition for correction of his date of birth as 01.11.1948 in place of 07.11.1943.

(2) The case of the petitioner is that he was appointed as a Labour in the year 1971. He was not aware about the entry regarding his date of birth as 07.11.1943 in his service records. When he could come to know in the year 1988 about the said wrong entry, he made an application to the concerned authority in the month of August 1988. In reply to the said application, the Deputy Personnel Manager of the Colliery informed the petitioner vide memo dated10/11-08-1988 that the matter of correction of his date of birth shall be examined by the Area Task Force Committee, constituted for complaints pertaining to date of birth for which the petitioner shall be intimated. Thereafter, the petitioner was never intimated. However, when the petitioner approached the respondents, it was informed that corrections have been made in the service records. Later on, when the petitioner

again checked his service records for some insurance purpose, he came to know that no corrections have been made, therefore, he again filed representations dated 20.6.2002. This representation was rejected vide memo dated 01.7.2002 saying that the entry in service book is correct. A reference is made in the said memo dated 01.7.2002 that the certificate annexed by the petitioner alongwith his representation was a photocopy, therefore, it was not considered according to Implementation No. 76. This correspondence has been filed as Annexure P-5. It is submitted that instead of rejecting the application in such a manner an opportunity would have been given to the petitioner for filing the original certificate and thereafter any order could have been passed. In support of these contentions, the petitioner has filed certificates in which his date of birth is shown as 01.11.1948.

(3) Return has been filed on behalf of the respondents. It is contended by them that the petitioner has raised this dispute in the second round at the fag end of his service. In fact, earlier he had raised this dispute in the year 1988 on which his matter was referred to the task force committee and the committee after examining the case of the petitioner on 04.9.1988 assessed the age of the petitioner as 01.7.1943 which was accepted by the petitioner in presence of the committee members. A copy of the recommendation of the task force committee has been filed as Annexure R-2. After the said recommendation, an endorsement was made in Form-B (Annexure R-3) and the matter came to an end in the year 1988. The petitioner ignoring all these facts has raised this dispute for the second time which is not permissible at this stage; therefore, the petition should be dismissed.

(4) I have heard learned counsel for the parties at length and have also perused the records of the writ petition.

(5) Annexure R-4 filed by the respondents is the Implementation No.76 which relates to determination of the age of the employees at various points of time. Paragraph-A provides for the determination

of age at the date of first appointment, whereas Paragraph-B provides for review/determination of date of birth in respect of existing employee, which would be applicable in the present case. Certain modes regarding determination of the age or date of birth have been given in this paragraph and it has been provided vide sub-para (iii) of Para-B that where there is no variation in records, such cases will not be reopened unless there is a very glaring and apparent wrong entry brought to the notice of the management. It has further been provided that the management after being satisfied on the merits of the case will take appropriate action for correction through the Age Determination Committee/Medical Board. It has also been provided vide Para-C that an Age Determination Committee/Medical Board for the above may be constituted by the Management and appropriate cases shall be referred to it.

(6) If we examine the case of the petitioner, it would appear that a communication dated 07.9.1988 is there on record which shows that the task force committee held on 04.9.1988 assessed the date of birth of the petitioner as 01.7.1943. It has also been mentioned in this communication that the said date of birth was accepted by the petitioner in presence of the members of the Committee. This communication is a Cyclostyled Proforma in which the name and date of birth etc., are written in the blank column. However, it does not disclose as to how the Task Force Committee assessed the date of the birth of the petitioner as 01.7.1943. This document filed by the respondents does not bear the signature of the petitioner also. There is no mention of the certificate filed by the petitioner alongwith his representation in the year 1988 (Annexure P-2). The averments of the petition as well as the return would show that the appearance before the task force committee and communication of the recommendations of the Task Force Committee to the petitioner are the disputed facts which this court is not going to determine in this writ petition. But the fact remains that the recommendation dated 7.9.1988 does not show as to how the task force committee came to the conclusion that the date of birth of the

petitioner was 01.7.1943 and the same was rightly entered in the service records.

(7) If we look into the communication dated 01.7.2002 (Annexure P-5), which was sent to the petitioner by the Personnel Manager on his representation dt. 20.6.2002, it would appear that his representation was dismissed only on the ground that the petitioner has filed the Photostat copy of the certificate which was not acceptable as per Implementation no.76 (Annexure R-4). This shows that the grounds raised by the petitioner in the representation were not taken into consideration and this order was issued to him. Even the concerned authority did not call upon the petitioner to furnish the original of the same, and the matter was turned down without consideration on merits.

(8) In the facts and circumstances of this case, particularly, looking to the communication dated 07.9.1988 (Annexure R-2) informing the decision of the task force committee and the other communication dated 01.7.2002 (Annexure P-5) rejecting the case of the petitioner without consideration, I am of the opinion that, in fact, the dispute raised by the petitioner regarding correction of his date of birth much prior to the date of his superannuation has not been properly dealt with on both the occasions either in the year 1988 or in the year 2002, therefore, I deem it appropriate to issue a direction to the respondents to refer the case of the petitioner to the Age Determination Committee for determining his age.

(9) It is hereby directed that the respondents shall refer the matter of the petitioner to the Age Determination Committee with all the documents filed by him alongwith the writ petition within a period of one month from today. On receipt of such reference, the Committee shall dispose of the matter as early as possible, preferably within a period of one month from the date of receipt of the said reference. The recommendation of the Age Determination Committee shall take its own course. There is an interim order dated 30.6.2003 in

which learned Senior Advocate appearing for the respondents has submitted as under:

> "It is submitted by Shri Nair that even if the petitioner is retired today, he will be permitted to continue in accommodation till further order and if he retires and ultimately he succeeds, he will be entitled for the benefits and the objection regarding no work no pay would not be taken."

For the time being, this interim order, so far as it relates to occupation of the company's accommodation, shall continue till the final decision taken by the management after the recommendation of the Age Determination Committee.

(10) The petition is allowed to the extent indicated above. However, the parties are directed to bear their own costs.

Sd/-
Sunil Kumar Sinha
Judge

/Rao/